



## *Department of Land Conservation and Development*

1175 COURT STREET N.E., SALEM, OREGON 97310 PHONE (503) 378-4926

### MEMORANDUM

January 10, 1984

TO: Acknowledged Jurisdictions

FROM: James F. Ross, Director

SUBJECT: REQUIREMENTS FOR REVIEW OF PLAN AND LAND USE REGULATION CHANGES

#### Background

In 1981, the Legislature established a process for review of amendments to comprehensive plans and land use regulations following LCDC acknowledgment. The Land Conservation and Development Commission implemented these requirements by adopting an administrative rule (OAR 660-18). The 1983 Legislature made several changes in the basic requirements for processing amendments which are reflected in a revised LCDC administrative rule (OAR 660-18). This memorandum is intended to provide a summary of the review process.

#### SUMMARY OF REQUIREMENTS

Jurisdictions whose comprehensive plans and land use regulations have been "acknowledged" by LCDC have the responsibility to process amendments to those plan and land use regulations through the "Post Acknowledgment" procedures contained in ORS 197.610 through 197.625 and OAR 660-18-005 through 660-18-140.

#### Notice of Proposals

Amendments to acknowledged plan and land use regulations must be received by the Department of Land Conservation and Development Salem office at least 45 days prior to the scheduled final public hearing. If the statewide goals do not apply to a proposed action, a notice of the proposal is not required. In addition, where emergency circumstances exist, a local government may provide less than 45 days notice, but should give the maximum possible notice. Jurisdictions should be cautious in using these exemptions because a person may appeal a local action taken under these exemptions without being required to participate at the local level.

Notices to DLCD of proposed amendments must include filing forms which are available from the Department (copies are attached to this memo). These forms provide basic information to the Department which is necessary to process proposals quickly. Three copies of the proposed amendment must also be provided to DLCD.

### Notice of Adoption

When an amendment to an acknowledged plan or land use regulation is adopted, the local government must provide a notice of adoption to the Department's Salem office within five working days. Notice of adoption is also required for amendments which are exempt from "proposed notice" requirements discussed above. Notice of adoption must include filing forms, but only requires one copy of the amendment. Amendments over 100 pages in length, including supplementary material, must also include a brief summary of the purpose and requirements of action.

### Appeal

Appeals of local government actions must be made to the Land Use Board of Appeals (LUBA) rather than to LCDC. Actions must be appealed within 21 days of the final decision or the action is considered to be acknowledged.

### Summary

It is difficult to provide a simple explanation of a complicated process with many variables. Each jurisdiction has a unique local process which may or may not easily mesh with these requirements. However, the system has only two basic procedural requirements: (1) filing a proposed notice with DLCD 45 days prior to the final public hearing; and (2) filing an adoption notice five working days after the final decision.

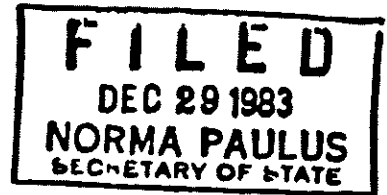
We have attempted to simplify the process by developing filing forms and a flow chart attached to this memo. We are also attaching a copy of the administrative rule governing the process for your information.

You can obtain additional copies of the administrative rule or notice forms from the Department in Salem or from our field offices if necessary. Field Representatives can also assist in answering any questions you may have about this process. This memorandum does not go into detail about the technical requirements for Department participation, notices, or the appeals element of the process, but is only intended to describe the essential responsibilities of local government. We will contact you, as appropriate, in individual situations which require more information or involve procedures not outlined in this memo.

### Attachments

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**OAR 660-18-000**  
**Division 18**  
**Plan and Land Use Regulation Amendment Review Rule**



**660-18-005 Purpose.** This administrative rule is intended to implement provisions of ORS 197.610 through 197.625. The overall purpose is to carry out the state policy outlined in ORS 197.010.

**660-18-010 Definitions.** For the purpose of this rule, the definitions contained in ORS 197.015 shall apply. In addition, the following definitions apply:

(1) "Acknowledgment" means a Commission order that certifies that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the Goals.

(2) "Filing" or "Submitted" shall mean that the required documents have been received by the Department of Land Conservation and Development at its Salem, Oregon office.

(3) "Final Decision" as described in OAR 660-18-040 and OAR 660-18-050 shall be the approval or approval as modified, by the local government, of a proposed amendment to or adoption of a comprehensive plan or land use regulation. A denial of a proposed amendment by the local government shall not be considered a "Final Decision" and therefore is not subject to review under this administrative rule. The date of the "Final Decision" as described in OAR 660-18-040 shall be the date on which the local government takes final action on the amendment to or adoption of a comprehensive plan or land use regulation. In order to be deemed final, the local government action must include the adoption of all supplementary findings and data. In addition, the date of final action shall be the day following exhaustion of all appeal rights before local government.

(4) "Final Hearing on Adoption" as described in OAR 660-18-020 and OAR 660-18-030 shall be the last hearing where all interested persons are allowed to present evidence and rebut testimony on the proposal to adopt or amend a comprehensive plan or land use regulation. "Final Hearing on Adoption" shall not include a hearing held solely on the record of a previous hearing held by the governing body or its designated hearing body. If a final hearing on adoption is continued or delayed, following proper procedures, the local government is not required to submit a new notice under OAR 660-18-020.

(5) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including, but not limited to, sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs. "Comprehensive" means all inclusive, both in terms of the

geographic area covered and functional and natural activities and systems occurring in the area covered by the plan. "General nature" means a summary of the policies and proposals in broad categories and does not necessarily indicate specific locations of any area, activity, or use. A plan is "coordinated" when the needs of all levels of governments, semipublic and private agencies, and the citizens of Oregon have been considered and accommodated as much as possible. "Land" includes water, both surface and subsurface, and the air.

(6) "Land Use Regulation" means any local government zoning ordinance, land division ordinance adopted under ORS 92.044 or 92.046 or similar general ordinance establishing standards for implementing a comprehensive plan. "Land use regulation" does not include small tract zoning map amendments, conditional use permits, individual subdivision, partitioning or planned unit development approvals or denials, annexations, variances, building permits and similar administrative-type decisions.

(7) "New Land Use Regulation" means a land use regulation other than an amendment to an acknowledged land use regulation adopted by a local government that already has a comprehensive plan and land use regulations acknowledged under ORS 197.251.

(8) "Substantially Amended" as used in OAR 660-18-045 shall mean any change in text which differs from the proposal submitted under OAR 660-18-020 to such a degree that the notice under OAR 660-18-020 did not reasonably describe the nature of the local government final action.

(9) "Commission" means the Land Conservation and Development Commission.

(10) "Department" means the Department of Land Conservation and Development.

(11) "Director" means the Director of the Department of Land Conservation and Development or the designee thereof.

(12) "Goals" mean the mandatory state-wide planning standards adopted by the Commission pursuant to ORS 197.005 to 197.430 and 197.610 to 197.650.

(13) "Local Government" means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(14) "Computation of Time," means unless otherwise provided in this rule, the time within which an act is to be done is computed by excluding the first day and including the last unless the last day falls upon any legal holiday or on Saturday, in which case the last day is also excluded.

660-18-020 Filing of a Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation with the Director. A proposal

to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be submitted to the Director at least 45 days before the final hearing on adoption. The proposal submitted shall be accompanied by appropriate forms provided by the Department and shall contain three copies of the text and any supplemental information the local government believes is necessary to inform the Director as to the effect of the proposal. The submittal shall indicate the date of the final hearing on adoption. The Commission urges the local government to submit information that explains the relationship of the proposal to the acknowledged plan and the goals, where applicable. (197.610(1))

660-18-022 Exemptions to Filing Requirements Under OAR 660-18-020.

(1) A local government is not required to submit a proposed amendment to the Director under OAR 660-18-020 when the local government determines that the Goals do not apply to a particular proposed amendment or new regulation.

(2) A local government may provide less than 45 days notice as required in OAR 660-18-020 when the local government determines there are emergency circumstances requiring expedited review (197.610, 2).

660-18-025 Notice of Proposed Amendment to or Adoption of a Comprehensive Plan or Land Use Regulation Sent to Those Requesting. Persons requesting notice of proposed amendments to acknowledged comprehensive plans or land use regulations or adoptions of new land use regulations who have paid the fee established under the provisions of OAR 660-18-140 shall be mailed a notice by the Department of the proposed action within 15 days of the receipt of notice from local government required by OAR 660-18-020. (197.610(1))

660-18-030 Report to Commission. The Director shall report the Department position on proposed comprehensive plan or land use regulation adoption or amendments to the Commission at least 20 days prior to the final hearing on adoption. This report shall indicate whether the Department will participate in local government proceedings and whether the Director believes the proposal violates the goals. (197.610(3))

660-18-035 Department Participation. If the Department is participating in a local government proceeding for which notice was received under OAR 660-18-020, the Department shall notify the local government. The Department notification shall occur at least 15 days prior to the final hearing on adoption as specified in notice received under OAR 660-18-020 and shall indicate any concerns with the proposal and recommendations considered necessary to address the concerns including, but not limited to, suggested corrections to achieve compliance with the goals. (197.610(2))

660-18-040 Submittal of Adopted Material. (1) Amendments to acknowledged comprehensive plans or land use regulations, new land use regulations adopted by local government and findings to support the

option shall be mailed or otherwise submitted to the Director within five working days after the final decision by the governing body and shall be accompanied by appropriate forms provided by the Department. The date of the "Final Decision" as described in this rule shall be the date on which the local government takes final action on the amendment to or adoption of a comprehensive plan or land use regulation and must include the adoption of all supplementary findings and data. In addition, the date of final action shall be the day following exhaustion of all appeal rights before the local government.

(2) The local government shall clearly indicate in its transmittal which provisions of OAR 660-18-022 are applicable where the adopted amendment was not submitted for review 45 days prior to the final hearing on adoption.

(Note: ORS 197.610 clearly requires all adopted plan and land use regulation amendments and new land use regulations to be submitted to the Director even though they were not required to be submitted for review prior to adoption.)

(3) Where amendments, including supplementary materials exceed 100 pages, a summary of the amendment briefly describing its purpose and requirements shall be submitted to the Director (197.615(1), 197.610(2))

660-18-045 Changes in Proposals. If comprehensive plan or land use regulation amendments or new land use regulations which are adopted by local government have been substantially amended the local government shall specify the changes that have been made in the notice to the Director provided in OAR 660-18-040. (197.615(1))

660-18-050 Notice to Other Parties. In addition to notice requirements in OAR 660-18-040, within five working days of the final decision by the governing body, local government shall send notice of the action to persons who participated in the proceedings leading to adoption and requested notice in writing. The notice required by OAR 660-18-050 shall describe the action, state the date of the decision, indicate the time and place where the acknowledged comprehensive plan or land use regulation amendment or new land use regulation and findings can be reviewed. In addition, the notice shall indicate the requirements for appealing the local government action to the Land Use Board of Appeals. (197.615(2))

660-18-055 Notice of Local Government Action by the Director.

(1) Within five working days of the receipt of notice under OAR 660-18-040, the Director shall provide notice by mail or other submittal to those who have requested notice under OAR 660-18-055 and have paid the fee established under the provisions of OAR 660-18-140. This notice shall explain the requirements for appealing the local government action to the Land Use Board of Appeals and indicate the locations where the adopted documents may be reviewed. (197.615(3))

(2) Notwithstanding subsection (1) of this section, the Director shall provide notice by mail or other submittal to persons described in

(1) above within five calendar days of the receipt of notice under OAR 660-18-040 of amendments made pursuant to OAR 660-18-022.

**660-18-060 Who May Appeal.** (1) Persons who participated either orally or in writing in the local government proceedings leading to adoption of an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation may appeal the decision to the Land Use Board of Appeals under ORS 197.830 to 197.845. (2) The director or any other person may file an appeal of the local government's decision to the Land Use Board of Appeals under ORS 197.830 to 197.845 if an amendment to a comprehensive plan or land use regulation or a new land use regulation differs from the proposal and notice submitted under OAR 660-18-020 to such a degree that the notice did not reasonably describe the nature of the local government final action. (3) The director or any person may appeal a local government decision to adopt an amendment to an acknowledged comprehensive plan or land use regulation or a new land use regulation to the Land Use Board of Appeals under ORS 197.830 to 197.845 when the local government does not provide the notice required by OAR 660-18-020 under exemptions contained in OAR 660-18-022 (197.620, 197.610(2)(b)). Note: A decision not to adopt a legislative amendment or new land use regulation is not appealable (197.620).

**660-18-085 Action Where No Appeal or Objection is Timely Filed.** Upon receipt of an affidavit from the Land Use Board of Appeals certifying that no timely appeal has been filed or that a local decision has been affirmed, the Director shall certify that an action taken subject to this rule is acknowledged. If LUBA sustains a local government action, or no appeal is timely filed, a local action under this division is considered acknowledged. (197.625)

**660-18-140 Fee for Notice.**

(1) An annual fee of \$50 to defray the costs of notice provided under OAR 660-18-025 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1982. The fee is payable in advance of any notice being provided under OAR 660-18-025. For each subsequent fiscal year, the Department shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-18-025. (197.610)

(2) An annual fee of \$150 to defray the costs of notice provided under OAR 660-18-055 is established. The fee shall be assessed for each fiscal year, or fraction thereof, commencing July 1, 1982. The fee is payable in advance of any notice being provided under OAR 660-18-055. For each subsequent fiscal year, the Department shall bill persons requesting such notice the annual fee each July. Persons failing to remit the fee within 30 days of the date of the invoice shall be deemed as having terminated the request for notice provided under OAR 660-18-055.

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NOTICE OF PROPOSED ACTION

OFFICE USE ONLY

LCDC FILE # \_\_\_\_\_

TO: DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT  
1175 Court Street N.E.  
Salem, Oregon 97310-0590

Action: (Check all that apply)

       Comprehensive Plan Amendment             Land Use Regulation Amendment             New Land Use Regulation

DATE: \_\_\_\_\_  
FROM: \_\_\_\_\_ (City or County)  
LOCAL FILE NUMBER: \_\_\_\_\_

DATE SET FOR FINAL HEARING ON ADOPTION: \_\_\_\_\_  
(Note: Notice must be received in Salem at least 45 days prior to the final hearing. This date must be provided when filed at DLCD because provisions for comments are tied to the date of final hearing).

TIME AND PLACE FOR HEARING: \_\_\_\_\_  
\_\_\_\_\_

(1) SUMMARY AND PURPOSE OF PROPOSED ACTION:

- a. Size of Affected Area: \_\_\_\_\_  
b. Location of Affected Area: \_\_\_\_\_

(2) List Statewide Goals which may apply to the proposal:

(3) List any state or federal agencies, local government or local special service districts which may be interested in or impacted by the proposal:

Direct questions and comments to: \_\_\_\_\_ (Phone) \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_

\*NOTE: ATTACH 3 COPIES OF THE PROPOSAL TO THIS FORM\*



NOTICE OF ADOPTION

OFFICE USE ONLY

LCDC FILE # \_\_\_\_\_

TO: DEPARTMENT OF LAND CONSERVATION & DEVELOPMENT  
1175 Court Street N.E.  
Salem, Oregon 97310-0590

NOTE: Adopted plan and land use regulation amendments must be sent to DLCD within 5 days of the date of final adoption.

Action: (Check all that apply)

\_\_\_\_\_ Comprehensive Plan Amendment      \_\_\_\_\_ Land Use Regulation Amendment      \_\_\_\_\_ New Land Use Regulation

DATE: \_\_\_\_\_

FROM: \_\_\_\_\_ (City or County)

DATE OF ADOPTION: \_\_\_\_\_ LOCAL FILE NUMBER: \_\_\_\_\_

DATE PROPOSAL WAS PROVIDED TO DLCD: \_\_\_\_\_

- (1) Describe the action taken, including the size and location of the affected area  
(NOTE: If notice of the proposal was sent to DLCD 45 days prior to the final hearing, describe how the adopted measure differs from the proposal. If the adopted action is more than 100 pages in length, including supplementary findings and information, the local government is required to briefly describe the purpose and requirements of the action:

- (2) If notice of the proposal was NOT sent to DLCD 45 days prior to the final hearing, please indicate why:

\_\_\_\_\_ Statewide Planning Goals  
are inapplicable

\_\_\_\_\_ Emergency circumstances  
required expedited review

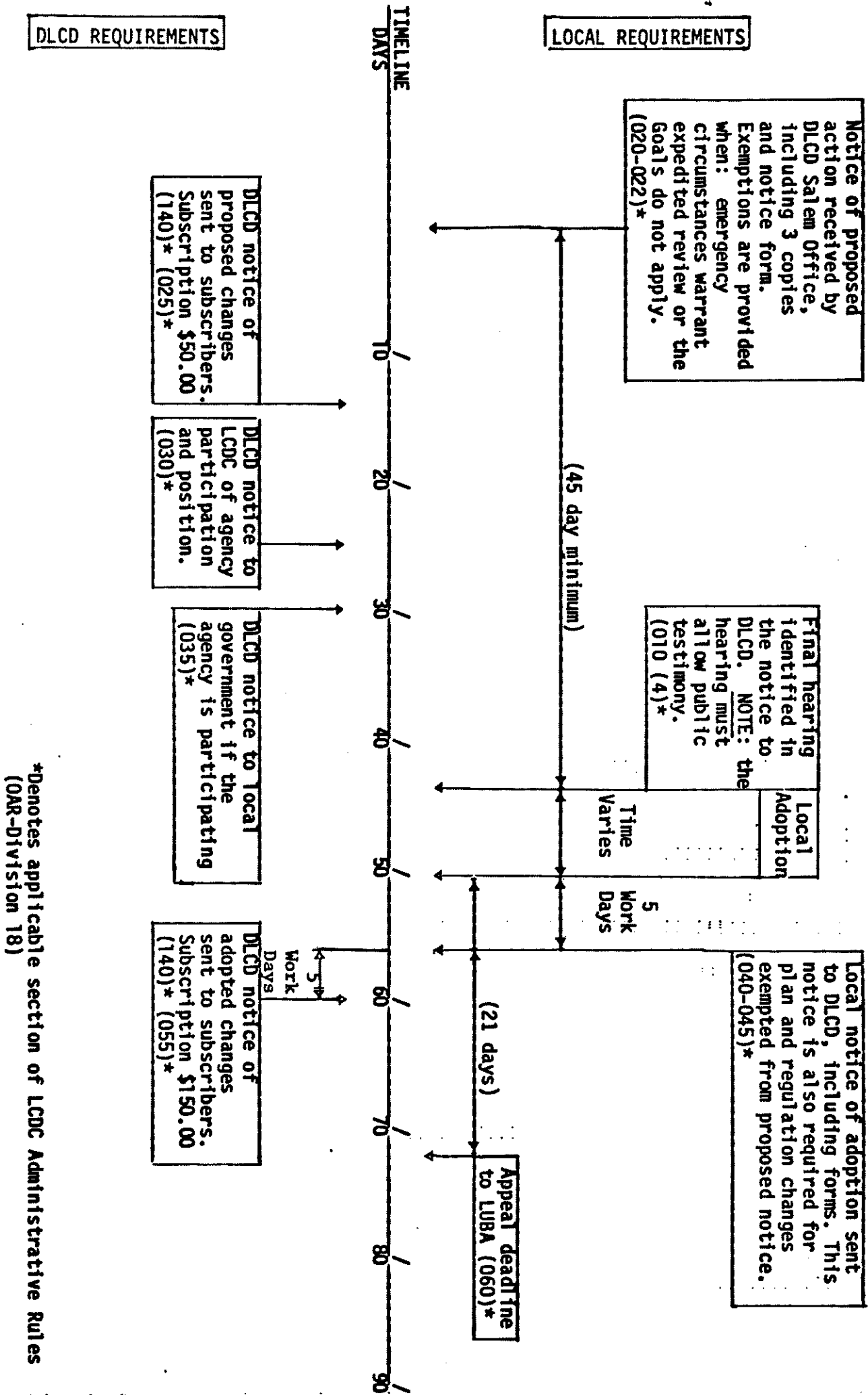
- (3) List Statewide Goals which may apply to the proposal:

- (4) List any state or federal agencies, local governments or local special service districts which may be interested in or impacted by the proposal.

Direct questions and comments to: \_\_\_\_\_ (phone) \_\_\_\_\_  
Address \_\_\_\_\_

\*NOTE: ATTACH A COPY OF THE ADOPTED ACTION TO THIS FORM\*

# FLOW CHART FOR PROCESSING OF PLAN AND LAND USE REGULATION CHANGES



\*Denotes applicable section of LCDC Administrative Rules (OAR-Division 18)